

Testimony of Devon Energy Corporation in support of SB 489(Essmann) to clarify taxation of pipelines, gathering lines and flow lines

For the record my name is Tom Ebzery, a Billings attorney appearing on behalf of Devon Energy in strong support of SB 489 and to thank bill sponsor Senator Jeff Essmann for the time and effort he has expended on this bill. Senator Essmann joins Devon, the oil and gas industry, schools and counties in recognizing that there were unanswered questions as a result of the 7-0 Omimex court decision in December, but one fact is clear from that decision: all of Omimex's assets in Montana should not be centrally assessed.

When the Department of Revenue (DOR) petitioned for a rehearing of the Omimex case, it tried to persuade affected schools and counties to join in the request for a rehearing by claiming its interpretation of the decision was that all pipelines regardless of size or distance, regulated or unregulated would now be locally assessed at the 3% rate. The Supreme Court unanimously rejected the DOR petition, so the DOR turned to HB 642 to legislatively overturn the Montana Supreme Court decision. HB 642 was heard a couple of weeks ago and deadlocked. That bill is dead for the session and the bill before you is the last vehicle available to deal with this issue and the perceived threat by the DOR to change all pipelines to the lower locally assessed rate of 3%, therefore depriving schools and counties revenue from the large pipelines who had historically been centrally assessed at the 12% rate.

A good example is Havre Pipeline which is regulated by the Montana Public Service Commission and is 82% owned by Devon. It was centrally assessed by DOR when Devon acquired the company and Devon has never challenged that it should be centrally assessed. Same holds true for companies Devon does not own such as Northern Border Pipeline, Williston Basin Pipeline and for the first time if this bill is passed Bitter Creek Pipeline.

This bill simply clarifies that gathering lines, flow lines, and gas wells are locally assessed and stops the Department's continued efforts to assess parts or even all the assets of companies such as Devon centrally. This is what they did to Omimex and the Montana Supreme Court unanimously rejected the DOR efforts. Should this bill not pass and the DOR continues the central assessment "creep," it will again be challenged and we believe successfully. We believe this bill will put an end to the needless litigation and dollars spent protesting DOR's illegal activities. We believe the way this bill is drafted will leave Havre Pipeline as centrally assessed at 12 %, while gathering systems who are not regulated and below 500 miles such as Bear Paw will be locally assessed along with flow lines and the approximately 900 wells Devon owns and operates in Montana.

This bill does not make all counties and schools whole due to the unanimous ruling by the Montana Supreme Court on the DOR illegal activity. Amendments attempting to overturn this lawsuit have been offered and defeated in the Senate and some may be in play here. We urge you to follow the Senate who on a 43-5 vote sent this bill to you in hopes of ending this confusion so that companies such as Devon, Omimex, Fidelity, Encore and others can go back to doing what they do best and that is producing natural gas for the use of Montanans and others.

Time is short and there are few days left to redraw the bill when it has taken close to 80 days to get it in a form that we believe will clearly eliminate confusion and provide certainty to schools, counties and gas producers. Please do not amend this bill for one school district or county at the expense of the other 400 odd school districts and 55 other counties. Devon urges a concurrence with SB 489.



Dan Bucks
Director

Montana Department of Revenue



Brian Schweitzer
Governor

May 27, 2008

**CERTIFIED RETURN RECEIPT
REQUIRED**

Devon Energy Corporation
Layne R. Wroblewski
Tax Department, Corporate Division
Post Office Box 108838
Oklahoma City, Oklahoma 73101-8838

"WARNING YOU MUST RESPOND WITHIN 30 DAYS OF THIS AUDIT, OR YOU WILL LOSE YOUR RIGHT TO APPEAL"

Dear Mr. Wroblewski,

The Montana Department of Revenue has completed the Devon Energy Corporation property tax audit relating to the years 2003-2006. I would like to thank you for your cooperation through the duration of the audit process.

Our audit has not identified any material audit exceptions; however the audit has identified an issue in the manner which the Devon Energy Corporation's property tax is filed with the State of Montana. Currently Devon Energy Corporation files two separate Montana Annual Reporting Forms for unit valuation. Additionally, Devon Energy Corporation has extraction and other miscellaneous property, filed at local county offices.

It is the decision of the Department to combine all Montana property holdings relating to Devon Energy Corporation into one unit filing.

Our determination is supported by 15-23-101 of Montana Code Annotated and Administrative Rule of Montana 42.22.102.3 which states "the department will determine centrally assessed property based on the property's operating characteristics such as but not limited to property use, integration of operations, management, and corporate structure."

The Department expects the 2009 Montana Annual Reporting Form to contain all of the property of Devon Energy Corporation. If you require assistance in consolidating all property tax filings, please do not hesitate to contact myself or Angie Haller at (406) 444-5853 or at (406) 444-2515, respectively.

You have the right to appeal the final decision of the department, as stated in 15-1-211 of Montana Code Annotated.

Please forward any audit related correspondence to:

**Montana Department of Revenue
Business & Income Tax Division
Attention: Herschel D. Mays
Post Office Box 5805
Helena, MT 59604-5805**

Please don't hesitate to contact the undersigned at (406) 444-5853, regarding audit specific details.

Sincerely,

Herschel D. Mays
Auditor, Business & Income Tax Division
State of Montana